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In the

Supreme Court of the United States

OCTOBER TERM, 1960

No.

[redacted]

v.

[redacted]

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals

for the Fifth Circuit

[redacted]

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In the

Supreme Court of the United States

OCTOBER TERM, 1960

No.

LYMAN MOODY BENNETT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals for the Fifth Circuit

Petitioner LYMAN MOODY BENNETT respectfully submits this his petition for writ of certiorari to review a judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The District Court rendered no opinion. The opinion of the Court of Appeals for the Fifth Circuit is printed as Appendix D, herein. (R. 846.)

JURISDICTION

Judgment of the Court of Appeals for the Fifth Circuit was entered on December 28, 1960 and is attached hereto as Appendix A. Order denying motion for rehearing was entered February 17, 1961 and is attached hereto as Appendix B. Mandate of said court was stayed by order of Elbert B. Tuttle, United States Circuit Judge for the Fifth Circuit for a period of thirty days from February 17, 1961 in order that this petition for certiorari might be perfected. Said order is attached hereto as Appendix C.

Jurisdiction of this Court is invoked under 28 U. S. C. Sec. 1254(1).

QUESTIONS PRESENTED

(1) Has applicant been afforded that high standard of due process so often pronounced by this Court?

(2) Does the lower court decision conflict with the decisions of this Honorable Court?

(3) Has the decision of the court below sanctioned such a departure by the lower court of accepted and usual course of judicial proceedings as to call for an exercise of this Honorable Court's power of supervision?

It is thought that this application should be granted for the following reasons:

I.

The Circuit Court erred in holding the indictment sufficient.

II.

The Circuit Court erred in approving certain instructions of the trial court.

III.

The Circuit Court erred in not reversing the case because of the argument of the prosecuting attorneys.

IV.

The Circuit Court erred in sanctioning the substitution of one judge for the purpose of passing on motion for new trial and sentencing when credibility of witnesses was involved.

STATEMENT OF THE CASE

Petitioner was convicted by a jury on each of two counts of an indictment which is quoted in the opinion of the court below, attached hereto as Appendix D, and appears in the record, pp. 1-2. He was tried before Judge R. E. Thomason and during his temporary illness and absence, Hon. Ben H. Rice, Jr., senior judge of the District, overruled petitioner's motion that he ~~recuse~~ recuse himself, and overruled his motion for a new trial which was based solely on credibility of witnesses at the main trial; and sentenced petitioner to serve eighteen months on the first count, and two years on the second, the second sentence to commence at the expiration of the first, and same being suspended (R. 813). App. D.